(54)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 6490 OF 2005

PETITIONER Maruthavanan, S/o. Govindan Chettiar, aged 47 years R/o Neduvasal, Taluka – Alangudi, Distt. Padukkottai, Tamil Nadu.

Presently resident of Ram Gopal Tiwari, ward Mungeli, Tah. Mungeli, Distt. Bilaspur (C.G.)

versus

RESPONDENTS

1. State of C.G. through secretary, Deptt. of Home D.K.S. Bhawan, Raipur (C.G.)
2. The Collector, Bilaspur (C.G.)
3. The S.P. Bilaspur (C.G.)
4. The Station House Officer, P.S. Mungeli, Distt. Bilaspur (C.G.)

Present : Mr. Praveen Das, learned counsel for the petitioner.
Mr. Vinay Harit, learned Govt. Advocate for the respondents.

ORAL ORDER
(Passed on 25th January, 2006)

The case of the petitioner, in brief, is as follows:

The petitioner hails from the State of Tamilnadu. He came to State of Chhattisgarh about 9-10 months back to earn his livelihood. He took a rented accommodation in Mungeli Town and established a shop under the name and style 'Shri Sai Corporation' and his business has flourished to the eye-sore of others. The rival businessmen conniving with respondent No. 4 who is Station House Officer, Police Station, Mungeli set-up local people to rob the goods of the petitioner stored in the shop. The 4th respondent-Police Officer, instead of maintaining law and order and protecting the person and property of the petitioner and without legal authority has forced the petitioner to close the shop and put a lock on the

door of it. With the above allegation, the petitioner has sought for a direction to the respondents not to interfere with the lawful business activities of the petitioner without following the due process of law and also for the declaration that the action of the 4th respondent is arbitrary, illegal and violative of the petitioner's right guaranteed under Article 19(1)(g) of the Constitution of India.

(2) In response to the notice, Shri G. Pramod Naidu, Station House Officer, Police Station Mungeli has filed an affidavit sworn to by him on 20-01-2006. In the said affidavit, it is stated that on 26-11-2005, some residents of Mungeli Town reported to him that some scuffle was going on between the petitioner and his employees on the one hand a large number of public at large on the other; the public was trying to take away beds, chairs, mixees and other items which were stored by the petitioner in his shop apprehending that the petitioner and his employees would flee from the place without paying back their money. On receipt of this information, a Police party led by Sub Inspector D. Singh was sent to the scene of occurrence, but, they found that the miscreants had left the scene taking with them whatever materials they could possibly carry. Having thus stated in para 6, the deponent in para 7 has stated that there was nobody to guard shop of the petitioner and with a *bona fide* intention that the remaining materials in the shop should not be stolen or taken away by miscreants, Sub Inspector D. Singh put a lock on the door of the shop.

(3) There is no necessity to refer to the other averments made in the affidavit. Suffice it to state that the other averments would disclose that no crime is registered against the petitioner so far. In that view of the

matter, when this writ petition was heard earlier, the 4th respondent who was before the Court, had told the Court that he had no objection to handover the key of the lock put on the door of the shop of the petitioner by Sub Inspector D. Singh and in fact he wanted to handover the key to the petitioner, but, the petitioner did not approach him. This assertion made by the 4th respondent was squarely denied by the petitioner who was also before the Court. In that view of the matter, the Court had orally directed the 4th respondent to handover the key to the petitioner before the Court. Accordingly, today, at the time of hearing the 4th respondent who is before the Court handed over the key of the lock put by Sub Inspector D. Singh.

(4) We live in democracy and under rule of law. Any public officer in order to exercise any power should have legal sanction and authority granted by law and without such authority, if he exercises any power, such exercise would be *per se* illegal and ultra vires rule of law. When it is the admitted case that no crime is registered against the petitioner for violation of any law or commission of crime, I am at a loss to understand how the 4th respondent or any other Police Officer could interfere with the business of the petitioner whose status as a citizen of this country is not denied before me. On the other hand, the averments made in the affidavit of the 4th respondent itself would show that the miscreants in the locality ganged up, robbed the goods stored by the petitioner in his shop and it is needless to state that such action of the gangsters would *ex facie* show that they indulged in crime, a cognizable crime. If that is so, a duty was cast on the local Police to take appropriate action and steps in accordance with law to protect the person and property

of the petitioner. The Police have failed in their duty. The failure of the local Police headed by the 4th respondent to maintain the law and order and to protect the person and property of the petitioner, is a serious matter to be noticed by higher-ups in the Police Department. There is no necessity for me to dilate on this aspect in the present case. Suffice it to state that the 4th respondent or any other Police Officer cannot meddle or interfere with the lawful business activity of the petitioner without the authority of law and warrant. In that view of the matter, I dispose of the writ petition directing the 4th respondent not to interfere with the business of the petitioner in the subject shop without legal authority and fair procedure. A copy of this order be transmitted to the Secretary to the Government, Home Department Chhattisgarh State, Raipur and to the Superintendent of Police, Bilaspur for their information and necessary action in the matter. The writ petition is disposed of accordingly. No costs.

Sd/-
Chief Justice

Brajesh